

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

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**FILE:** B-212971

**DATE:** May 14, 1984

**MATTER OF:** Western Graphtec, Inc.

**DIGEST:**

1. Initial proposal is properly excluded from the competitive range where information necessary to evaluate the proposal was omitted.
2. Protest that procuring activity arbitrarily relaxed specifications to make awardee's proposal acceptable is without merit where RFP contemplates offerors proposing alternate specifications and awardee proposed such specifications and provided rationale required by the RFP.
3. GAO will not review affirmative determination of responsibility absent circumstances not applicable here.

Western Graphtec, Inc. (Western), protests the exclusion of its proposal from the competitive range and the award of a contract for six 8-channel direct writing recording systems to Gould, Incorporated (Gould), under request for proposals (RFP) No. DAEA18-83-R-0051, issued by the Department of the Army (Army), Fort Huachuca, Arizona.

The protest is denied in part and dismissed in part.

Five proposals were received in response to the RFP. After technical evaluation of the proposals, four of the five proposals, including Western's, were found to be technically unacceptable and were excluded from the competitive range. The Army conducted negotiations with only Gould, and award was made to that firm.

Western contends that the Army acted unreasonably in excluding Western's lower priced proposal from the competitive range. Western concedes that it failed to comply with the RFP, which required that offerors include acceptance test procedures (ATP) in their proposals, but argues that the firm's equipment met every technical specification in the RFP and that its failure to include ATP was a clerical omission which the contracting officer should have allowed Western to correct. In the alternative, Western argues that

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the Army should have entered into negotiations with Western to permit the firm to cure the deficiency.

The Army explains that the ATP were required to establish that offerors had good manufacturing and quality assurance procedures. As part of the technical evaluation, the information contained in the offerors' ATP is cross-referenced to specific technical requirements and then analyzed to ensure that the offerors' ATP contained adequate testing procedures for each technical requirement. Thus, the Army maintains that the exclusion of Western's proposal from the competitive range for failure to supply this information and records of acceptance tests actually conducted as required under other RFP provisions was proper.

The evaluation of proposals and determination of firms that will be included in negotiations are matters within the discretion of the procuring agency since it is responsible for identifying agency needs and the best method of accommodating them. MacGregor Athletic Products, B-211452, September 23, 1983, 83-2 CPD 366. We will not question an agency's evaluation of a proposal absent a showing that the agency's determination was unreasonable, arbitrary or in violation of procurement laws or regulations. MacGregor Athletic Products, *supra*; Digital Equipment Corporation, B-207312, August 9, 1982, 82-2 CPD 118. We, however, will scrutinize more closely any determination that results in only one offeror being included in the competitive range. All Star Dairies, B-209188, January 31, 1983, 83-1 CPD 107.

We cannot say that the Army's decision finding Western technically unacceptable was unreasonable or arbitrary. Our Office has recognized that a proposal properly may be excluded from the competitive range for deficiencies which are so material that major additions would be required to make it acceptable. MacGregor Athletic Products, *supra*; Decilog, B-198614, September 3, 1980, 80-2 CPD 169. Here, the RFP clearly warned offerors that proposals must be determined acceptable under the ATP factor to be included in the competitive range. The Army's technical evaluation shows that it analyzed each technical requirement under the applicable test procedure provided by the offeror to determine that the procedure was adequate. Thus, it was not possible for the Army to evaluate proposals without ATP and the protester does not challenge this. Under these circumstances, we will not disturb the Army's determination to eliminate Western's proposal from the competitive range. Moreover, once an offer has been properly determined technically unacceptable, a lower price which that offer might provide is irrelevant, since a technically unacceptable

proposal cannot be considered for award. See Kilfoyle Metal Buildings Company--Reconsideration, B-211161.2, February 22, 1984, 84-1 CPD 210.

Concerning Western's contention that the Army should have conducted negotiations with Western, we point out that once a proposal is properly eliminated from the competitive range, an agency is not required to hold discussions to allow for revision of the proposal. All Star Dairies, supra.

Western also argues that Gould's proposal did not comply with technical specifications set forth in the RFP and that the Army "arbitrarily relaxed" specifications to make Gould's unresponsive proposal responsive.

In general, the term "responsive," meaning a firm's expressed intent to meet the exact terms of the solicitation, is not applicable to a negotiated procurement. However, it may be used, as we feel Western intends here, to indicate that certain solicitation terms are material and that a proposal that fails to conform to them should be considered unacceptable. See Los Angeles Community College District, B-207096.2, August 8, 1983, 83-2 CPD 175. Western's allegation is without merit.

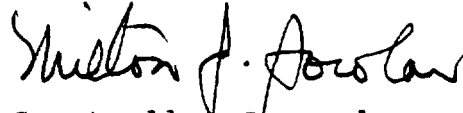
In this case, the RFP instructed offerors to indicate whether they took exception to the government's specifications and to provide the rationale for the exceptions taken. Thus, the RFP clearly contemplates offerors proposing alternate specifications which meet the government's needs. Our review of Gould's proposal shows that the firm took exception to certain specifications and provided the rationale for those exceptions as required by the RFP. Therefore, the Army acted properly in evaluating Gould's proposal on that basis. See CompuScan, 58 Comp. Gen. 440 (1979), 79-1 CPD 288.

Finally, Western alleges that the Army discriminated against that firm, a small business, by awarding to Gould, a large business, and that a large business cannot meet the terms of the RFP.

We point out, first, that the RFP did not restrict the procurement to small businesses and, therefore, nothing precluded an award to a large business. To the extent Western is protesting that Gould is incapable of performing the requirement, Western is questioning Gould's responsibility. Environmental Container Systems, Inc., B-201739, February 9, 1981, 81-1 CPD 83. Our Office does review protests of

affirmative determinations of responsibility unless fraud on the part of procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have been misapplied. Avrco Container Corporation, B-214908, April 24, 1984, 84-1 CPD \_\_\_\_\_. Neither exception is applicable here.

The protest is denied in part and dismissed in part.



Acting Comptroller General  
- of the United States